

Bloomsburg Graphic Communications Union, Local No. 732-C and Haddon Craftsmen, Inc. and Local 97B, Graphic Communications International Union. Case 4-CD-823

September 30, 1992

DECISION AND DETERMINATION OF
DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

The charge in this Section 10(k) proceeding was filed December 11, 1991, by Haddon Craftsmen, the Employer, alleging that the Respondent, Local 732-C, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Local 97B. The hearing was held March 9-10, 1992, before Hearing Officer Richard P. Heller.

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a wholly-owned subsidiary of Sullivan Graphics, Inc., a Delaware corporation, manufactures hard-cover and soft-cover books at several facilities, including facilities in Scranton and Bloomsburg, Pennsylvania. During the calendar year preceding the hearing, the Employer purchased and received goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 732-C and Local 97B are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

For at least 50 years, Local 97B has represented bindery workers at the Employer's Scranton plant, which is engaged primarily in binding printed pages into hard-cover and soft-cover books. At one time the Employer also printed books at the Scranton plant, but ceased doing so in about 1976. Article 1, section 3 of the current collective-bargaining agreement between the Employer and Local 97B describes the bargaining unit as "employees in the Bindery Department working on binding processes and all other operations incidental to Bindery materials and products."

Other unions represent other units of employees at the Scranton plant, and article 13 of the agreement between the Employer and Local 97B provides that:

upon the initial firm commitment of the installation of new equipment . . . the Company will notify in writing those Unions involved who will upon notification meet in joint discussion with the Company to resolve the jurisdictional problem that might be involved concerning the operation of said piece or pieces of equipment.

Article 13 further provides that if the Employer and the competing unions are unable to resolve conflicting claims, then the Employer is free to assign the work to the union it prefers, with the competing unions retaining the right to grieve the assignment of the work.

Since 1966, Local 732-C has represented employees at the Employer's Bloomsburg plant, located about 60 miles from Scranton and used by the Employer primarily to print books. The current collective-bargaining agreement between the Employer and Local 732-C describes the bargaining unit as "all production and maintenance employees employed at the Bloomsburg plant."

In January 1991,¹ Sullivan Graphics informed the Employer of plans to transfer a binder line, used in bookbinding, from another plant to Bloomsburg. Three machines, a binder, a gatherer, and a trimmer, comprise the binder line, and three skilled and six to eight unskilled workers are required to operate it. The binder line arrived in Bloomsburg on January 31. On February 26, Local 97B filed a grievance contending that placement of the binder line in Bloomsburg violated articles 1 and 13 of its agreement with the Employer. Local 97B demanded that the Employer move the equipment to the Scranton plant and assign the work of operating the binder line to employees it represents. When the Employer denied the grievance, the parties arbitrated it, and on October 17, the arbitrator's award issued. The arbitrator found nothing in the Local 97B agreement to prevent the Employer from locating the binder line at the Bloomsburg plant and ordered the Employer to comply with article 13 by meeting with Locals 97B and 732-C to discuss which Union's represented employees would be assigned to operate the binder line.

The Employer tried unsuccessfully to arrange such a meeting with representatives of Local 97B and Local 732-C. The Employer installed the binder line at the Bloomsburg plant, completing the process about December 9.

On December 4, Local 732-C's president, Liddick, wrote to the Employer disputing the arbitrator's authority to order Local 732-C to participate in a meeting

¹ Unless otherwise noted, all subsequent dates shall be in 1991.

with Local 97B to resolve jurisdictional claims and refusing to discuss the work assignment. Liddick further stated that Local 732-C's agreement with the Employer required that employees operating the bindery line be represented by Local 732-C. In addition, Local 732-C's membership authorized Liddick to inform the Employer that Local 732-C would take "strike action" if employees it represents were not assigned the work.² On December 9, Liddick wrote the Employer that

[w]e understand Local 97B in Scranton, PA is claiming bindery work at Bloomsburg Craftsmen. This is our work; and if it is not assigned to our Local 732-C Bloomsburg Craftsmen, we plan on taking strike action.

On February 4, 1992, the arbitrator issued a new decision in which he concluded employees represented by Local 97B should operate the binder line at the Bloomsburg plant, based on articles 1 and 13 of Local 97B's agreement with the Employer. The Employer has filed a complaint in U.S. District Court for the Middle District of Pennsylvania seeking to vacate the arbitrator's award.

B. Work in Dispute

The work in dispute is the operation of the equipment comprising a binder line, which binds hard-cover and soft-cover books at the Employer's plant in Bloomsburg, Pennsylvania.

C. Contentions of the Parties

Local 97B moves that the notice of hearing be quashed because no reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. It argues that Local 732-C's president, Liddick's, December 9 letter stated only that Local 732-C would take a strike vote if the work were not assigned to its members and was a sham threat intended only to invoke the Board's jurisdiction, and that the Employer generated the dispute by placing the binder line in Bloomsburg, a printing plant at which it had not previously bound books, and thus is faced with a dispute of its own making. Local 97B further contends that if the Board denies its motion to quash, the disputed work should be awarded to employees it represents on the basis of the factors of collective-bargaining agreements; past practice; training, experience, and skills; and safety.

The Employer contends that there is reasonable cause to believe that Local 732-C violated Section 8(b)(4)(D) and that a genuine work dispute exists in that Local 732-C threatened to strike if the Employer assigned the operation of the binder line to Local 97B and neither Union has disclaimed the disputed work;

that its collective-bargaining agreement with Local 732-C covers the work; and that the factors of employer preference, industry practice, and economy and efficiency of operations favor an award of the work to employees represented by Local 732-C.

Local 732-C contends that the Board should deny Local 97B's motion to quash the notice of hearing because a genuine work dispute and reasonable cause to believe that Section 8(b)(4)(D) has been violated exist, noting that Local 97B has claimed the work through a grievance culminating in an arbitration award, that it reiterated its own claim to the work at the hearing, and that it has notified the Employer that it will strike if the work is reassigned to Local 97B. Local 732-C contends further that the arbitrator is without authority to make an award binding on Local 732-C; that the work is covered by the unit description in its contract with the Employer; that the factors of Board certification and collective-bargaining agreements, employer preference, requisite skills, economy and efficiency of operation, and area practice favor award of the work to Local 732-C.

D. Applicability of the Statute

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

The parties have stipulated that there is no agreed-upon method for voluntary adjustment of the work dispute.³ In addition, we find that reasonable cause exists to believe that a violation of Section 8(b)(4)(D) has occurred. In this regard, we disagree with Local 97B that, because Local 732-C had not voted to strike when Liddick sent the December 9 letter, its threat to take strike action if the work were reassigned to employees represented by Local 97B was a sham. We note that at the hearing and in its brief Local 732-C reiterated its threat to strike if the work is reassigned, and noted in its brief that it would have no alternative but to strike if the work were reassigned because the grievance-arbitration provision of its contract with the Employer is not binding on Local 97B. Under these circumstances, we find that the reasonable cause standard has been met.

Thus, we find that the parties have no agreed-upon method for voluntary adjustment of the dispute within the meaning of Section 10(k) and that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. Accordingly, we find that the

²Local 732-C did not take an official strike vote, and its contract prohibits it from engaging in strikes or other work stoppages during the contract's term.

³No party contends that Local 732-C is bound by the Local 97B/Employer arbitration discussed above.

dispute is properly before the Board for determination.⁴

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certifications and collective-bargaining agreements

As set out above, each Union is a party to a collective-bargaining agreement with the Employer and each Union contends that the work in dispute is explicitly covered by the terms of its agreement with the Employer. Our review of the respective contracts and the surrounding circumstances indicates that both Local 97B and Local 732-C have arguable contractual claims to the disputed work. Accordingly, we conclude that this factor does not favor an award of the work in dispute to employees represented by either Union.

2. Employer past practice

The record indicates that the work of binding hard-cover and soft-cover books has traditionally been performed by the employees represented by Local 97B. Accordingly, we find that this factor favors awarding the disputed work to employees represented by Local 97B.

⁴Local 97B argues that no genuine jurisdictional dispute exists because the Employer created the dispute by deciding to place a binder line in its Bloomsburg printing plant, where it had not previously engaged in bookbinding, and assigning the work to employees represented by Local 732-C, citing *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818 (1986). We disagree and find *Wesco* inapplicable. In *Wesco*, the Board quashed the notice of hearing because the root of the dispute there, which involved the transfer of work already performed by the unit to employees represented by another union and employed by another employer, was whether the employer had breached a no-subcontracting agreement. Thus, the preservation of work already assigned to and performed by the unit was at issue. By contrast, employees represented by Local 97B have never operated the new binder line installed at Bloomsburg, and the Employer's assignment of the work of operating it to the Bloomsburg employees was therefore an original assignment of new work. Thus, Local 97B's claim of the operation of the new binder line was an attempt to acquire new work, not to preserve old work, and the dispute is properly before the Board in a 10(k) proceeding.

3. Area and industry practice

The evidence regarding area and industry practice is mixed. There is some evidence that other employers in the area and industry have facilities combining printing and binding at the same worksite. However, since about 1976 the Employer itself has maintained separate facilities for presswork and bindery operations. This factor does not favor awarding the disputed work to either group of employees.

4. Relative skills

The Scranton plant contains two binder lines operated by employees represented by Local 97B. The most skilled of these employees, those classified as Bookbinder A, have completed an apprenticeship program that teaches the skills involved in operating the binder line. The Employer and Local 732-C offered evidence that the members of Local 732-C currently operating the binder line in Bloomsburg have received training in the skills needed to operate the binder line and are performing the work in a satisfactory manner. Thus, this factor does not favor awarding the work to either group of employees.

5. Employer preference and economy and efficiency of operations

The Employer prefers that the work be assigned to the employees represented by Local 732-C, who are currently performing it. In addition, the evidence indicates that the soft-cover books printed and bound in Bloomsburg are shipped directly to customer warehouses located closer to Bloomsburg than to Scranton. Employer Senior Vice President Vispi testified that before the binder line was installed in Bloomsburg, the pages printed there were shrink-wrapped and sent to Scranton for binding. Vispi testified that ending the trucking of unbound books to Scranton saves the Employer approximately \$.01 for each book bound in Bloomsburg. Further, Vispi testified that, as Bloomsburg is located over 60 miles from Scranton, transporting employees represented by Local 97B from Scranton to Bloomsburg would involve significant increases in unproductive travel time, need for overtime, and insurance costs, as the employees represented by Local 97B would be "on the clock" during their travel time. Vispi also noted that the bookbinders represented by Local 97B observe different holidays under their agreement than do the employees at the Bloomsburg plant, which would create further scheduling problems. Further, the evidence indicates that the Bloomsburg plant, which is newer and is built on one level with concrete flooring, affords safer housing for the binder line than the Scranton plant, which is older, has multiple levels, and has wooden flooring.

We find that the factors of employer preference and economy and efficiency of operations favor awarding the disputed work to employees represented by Local 732-C.

Conclusion

After considering all the relevant factors, we conclude that employees represented by Local 732-C are entitled to perform the work in the dispute. We reach this conclusion relying on employer preference and economy and efficiency of operations.

In making this determination, we are awarding the work to employees represented by Local 732-C, not to that Union or its members. The determination is lim-

ited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Bloomsburg Craftsmen, a Division of Haddon Craftsmen, Bloomsburg, Pennsylvania, represented by Bloomsburg Graphic Communications Union, Local No. 732-C, are entitled to perform the operation of the equipment comprising a binder line, which binds hard-cover and soft-cover books at Haddon Craftsmen, Inc.'s plant in Bloomsburg, Pennsylvania.